

Before the  
DOT/RSPA  
DOCKETS  
88 JUL 29 PM 2:55

**RESEARCH & SPECIAL PROGRAMS ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION**

JULY 29, 1988  
WASHINGTON, DC

---

**CITY OF MARYLAND HEIGHTS (MISSOURI)  
APPLICATION FOR INCONSISTENCY RULING  
PUBLIC NOTICE AND INVITATION TO COMMENT**

---

Comments of

**AMERICAN TRUCKING ASSOCIATIONS**

---

RSPA Docket No. IRA-43  
June 6, 1988 Federal Register  
[53 Fed. Reg. 20736]



RSPA DOCKET NO. IRA-43  
[53 Fed. Reg. 20736]

Maryland Heights, Missouri  
Requirements  
For Hazardous Materials Transportation

FORWARD

The American Trucking Associations (ATA) with offices at 2200 Mill Road, Alexandria, Virginia 22314, is a federation with affiliated associations in every state and the District of Columbia. In the aggregate, ATA represents every type and class of motor carrier operation in the country, both for-hire and private. ATA represents companies with large fleets of trucks, as well as owner-operators with one truck.

The ATA Safety Department reviews legislative and regulatory proposals, coordinates the solicitation of industry views, and develops and submits, in rulemaking proceedings, comments reflecting trucking industry policy. In addition, the Safety Department develops educational programs and materials which assist motor carriers in meeting their responsibilities for safe operations and compliance with regulations.

The Law Department reviews legislative and regulatory proposals from a legal perspective. The Law Department has

been an active participant in previous applications for inconsistency rulings, including IRA-40A, IRA-40B, and IRA-42.

Issue Managers:

*Stephen F. Campbell*

Stephen Campbell  
Director, Safety Department  
(703) 838-1849

*John J. Collins*

John J. Collins  
Deputy General Counsel  
Law Department  
(703) 838-1857

American Trucking Associations, Inc. (ATA) is pleased to comment on the request by the City of Maryland Heights, Missouri, for an inconsistency ruling. The request, IRA-43, asks whether the City's requirement of a \$1,000 bond for each truck-hauling "hazardous or infectious wastes" is inconsistent with the requirements of the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR).

This request was published in the Federal Register on June 6, 1988 and comments are due by July 29, 1988.

#### I. CITY REQUIREMENTS

The entire text of section 3.I.1. of the City's Ordinance is as follows.

No person shall haul sewage, sludge, human excrement, special, hazardous or infectious wastes without providing a bond in the amount of One Thousand Dollars (\$1,000) per vehicle for each vehicle hauling or to haul sewage, sludge, human excrement, special, hazardous or infectious waste. The bond shall assure that the provisions of this Ordinance are satisfied and that sewage, sludge, human excrement, special, hazardous or infectious wastes are transported in a safe and sanitary manner. Such bond shall inure to the benefit of the City of Maryland Heights and persons residing in the City of Maryland Heights. The bond may be a cash or corporate bond. If a cash bond is offered, the cash shall be deposited with the Director of Finance, who shall give a receipt therefor. If a corporate bond is offered, it shall be executed by a surety or guaranty company qualified to transact business in the State of Missouri and must be approved by the City Attorney in order to be effective. The corporate bond shall be filed with the City Treasurer prior to the issuance of a business license and is in addition to any bonding requirements of St. Louis County.

At the outset, it is important to note that the Ordinance is drafted ambiguously. It is not clear whether the bond requirement applies to all hazardous materials or just hazardous wastes. This is because the word "infectious" in the first sentence is an adjective and clearly modifies "wastes", but other words in the list, "sewage" and "sludge", are nouns and do not. For the purpose of these comments, we will assume that "hazardous" is intended to modify "wastes" and therefore hazardous wastes require a bond, but hazardous materials do not. If our assumption is wrong, the transportation problems caused by the Ordinance would be even greater, but the legal analysis would not change.

Second, the term "haul" used in the Ordinance is not a term of art and is not defined in section 1 of the Ordinance. It is not clear if it means transportation to or from the City or includes transportation through the City. This is an important distinction because many more trucks travel through Maryland Heights than make pick-ups within it. Maryland Heights is at a crossroads of interstate commerce. It is less than 20 miles from the Missouri/Illinois border and contains segments of four major interstate highways. Interstate 270 is to the west of the City center, Interstate 70 is north, US 67 is to the east and state route D is to the south. A map is attached.

We were advised by telephone on July 18, 1988, by the the City official who filed the application with RSPA, Mr.

Michael Moran, that the City believes that it has the authority under the Ordinance to regulate trucks on the Interstate and state highways, even if the vehicles do not stop in the City. Therefore, our comments are based on the assumption that the term "haul" applies to all highway transportation within the City limits.

Third, although only the first sentence of the section was quoted in the Federal Register public notice, the rest of section 3.I.1. (quoted above) requires the bond to inure to the benefit of the City and is used to enforce compliance with the other provisions of section 3. These other sections, among other things, require a person engaged in the business of hauling waste to have an annual waste transportation license (subsections A and C), to be inspected (subsection D), to display a sticker (subsection G), to have specified levels of insurance (subsection J), and to have vehicles and containers which meet City construction requirements (subsection K.)

## II. ATA COMMENTS

ATA supports uniform national regulations that enhance the safe transportation of hazardous materials in a cost-effective manner. However, as described below, we believe that a unilateral action by a City to impose its own hazardous materials requirements is inconsistent with, and preempted by, the HMTA and the HMR.

A. Inconsistency Under the HMTA and HMR

RSPA has incorporated into its procedures (49 CFR § 107.209(c)) the following criteria for determining whether a non-Federal requirement is consistent with Federal law.

Whether compliance with both the non-Federal requirement and the Act or regulations issued under the Act is possible. (Conflict test)

The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act. (Obstacle test)

As described by the Office of Hazardous Materials Transportation (OHMT) in IR-22 (City of New York Regulations Governing Transportation of Hazardous Materials, 52 FR 46574, (December 8, 1987, appeal pending), the:

"obstacle" test requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

IR-22 goes on to describe the objectives of Congress in the following terms.

Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation". (Emphasis added, citations omitted, at 46574.)

We will analyze the City Ordinance in the light of these standards.

## B. Analysis

As described below, the City Ordinance is more than an obstacle to transportation. It is an obstacle to the HMTA and the HMR and in conflict with the HMR.

### 1. Lack of Uniformity

The City requirements are not part of a system of uniform national standards. Uniformity is important to the safe interstate transportation of hazardous wastes because a motor carrier in interstate transportation must travel through many jurisdictions. If the hazardous waste regulations differ from jurisdiction to jurisdiction, the motor carrier cannot hope to comply -- or even keep aware of -- the various requirements.

If the City were allowed to create its own hazardous materials transportation system, other jurisdictions would be likely to develop their own, unique regulations. If each state or local jurisdiction were able to create its own requirements, it would create such a multiplicity of different regulations that they would interfere with compliance with the HMR and reduce safety.

For example, 49 CFR § 177.800 describes that the purpose of parts 170-189 is "(t)o promote the uniform enforcement of law and to minimize the danger to life and property". The regulations proposed by the City are above and beyond the HMR

requirements and do not even refer or incorporate the HMR. Moreover the bond must inure to the specific benefit of the City and so a general bond would not meet the City requirements. This lack of uniformity is an obstacle to uniform enforcement of law which is the goal of the HMR. It is therefore inconsistent with the HMR.

The HMR contain detailed requirements for the construction of vehicles and containers which are used to transport hazardous materials. The Ordinance contains its own ambiguous requirements that "vehicles and containers used shall be constructed . . . so as to prevent wastes from spilling" and "shall have spillproof bodies". See section 3.K. The City Ordinance, by establishing these ambiguous requirements, detracts from the HMR and creates an obstacle to the goals of the HMTA.

The City requirement would also prohibit the use of drivers and vehicles who otherwise meet all of USDOT's requirements from hauling hazardous wastes within the City, unless the vehicle were bonded, licensed, inspected, insured and constructed in compliance with the City Ordinance. This lack of uniformity is an obstacle to compliance with the HMR, especially § 177.800, and is therefore inconsistent with the HMR.

## 2. Delays

The City regulations would create delays in the transportation of hazardous materials. A driver of a vehicle

containing hazardous wastes will be subject to penalty if the driver cannot show that the vehicle is properly bonded, licensed, insured and constructed in accordance with the City Ordinance. Any vehicle stopped will be delayed.

Moreover, the City Ordinance applies to specific vehicles. A carrier would have to know which vehicles were likely to pass through the City so that the particular vehicles could be bonded, licensed, insured and constructed in compliance with the City requirements. If the carrier chose to bond only some of the vehicles in the fleet, hazardous waste transportation might have to be delayed or handling increased to make sure that the wastes were loaded into a vehicle meeting the City's requirements.

Each such delay is in direct conflict with the provisions of 49 CFR § 177.853 that mandate that highway shipments of hazardous materials be transported without unnecessary delay. Such delay is also an obstacle to compliance with the HMR. As decided by OHMT in IR-22, supra, "hazardous materials transportation delays . . . constitute an independent basis for finding [regulations] to be inconsistent with the HMR." Therefore, the regulations should be preempted.

### 3. Routing Restriction/Ban

The City Ordinance, which sets a bond level of merely \$1,000, cannot measurably add to safety by just adding a new,

minimal requirement of financial resources. The truck by itself is worth more than the bond. In addition, Federal regulations require carriers of hazardous wastes in interstate commerce to have public liability insurance of at least one million dollars. (See 49 CFR § 387.15)

We are advised by representatives of the surety industry that the bonds will be very difficult and costly to obtain. Moreover, according to the Surety Association of America, some small businesses will be completely unable to obtain a bond. Therefore, the City Ordinance and the requirement for a bond will force some motor carriers to change their routes to avoid the City of Maryland Heights and the four major highways that pass through it. The Ordinance is really a routing restriction or a de facto ban. Perhaps this was the purpose of the Ordinance. However, as OHMT said in IR-23, City of New York Regulations Governing Routing and Time Restrictions on Transportation of Hazardous Materials, (53 FR at 16845, (May 11, 1988), appeal filed), routing restrictions and bans are inconsistent with the Federal requirements.

First, as to routing, IR-23, supra, states that:

Insofar as the Section V D provisions constitute routing restrictions . . . they were not preceded by a determination of effect on overall public safety or consultation with other affected jurisdictions and therefore are inconsistent with § 177.853(a).

There is nothing in the record to suggest that Maryland Heights has determined the effect on overall safety or consulted with other affected jurisdictions.

As to being a de facto ban, IR-23, supra, said:

Insofar as the Section V D provisions constitute bans, there are inconsistent because the power to ban is exclusively Federal and local bans are generally inconsistent. (Citations omitted). In essence, the City's prohibition . . . is an inconsistent attempt to resolve its perceived problems by effectively exporting them to other jurisdictions. (Citations omitted).

The City of Maryland Heights Ordinance and bonding requirement is similarly an attempt to export problems to other jurisdictions.

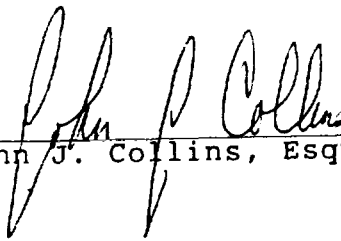
### III. CONCLUSION

The City Ordinance creates an obstacle to compliance with the HMTA and the HMR. Moreover, the regulations directly conflict with the HMR because of the delay that they would create.

OHMT should therefore find that find that the Ordinance of the City of Maryland Heights, Missouri is inconsistent with the HMTA and HMR and preempted. The preemption determination should not be limited just to the bonding issue, but should address the other provisions of the Ordinance which are also inconsistent with the HMTA and the HMR.

CERTIFICATE OF SERVICE

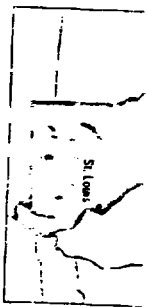
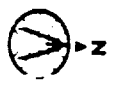
The undersigned hereby certifies that copies of these comments have been sent to Mr. Moran at the address specified in the Federal Register.

  
\_\_\_\_\_  
John J. Collins, Esquire

Explanation of all  
 symbols, see pg. 1.  
 of counties and  
 towns, page 119

Cahokia Mounds Research, G-10  
 Gateway Arch Life-Science Nat'l. (spanning Mem. N. H. S.) O-4  
 Jefferson Memorial (Missouri H. L. Society), F-7  
 McDonnell Planetarium, F-7  
 Missouri Botanical Garden, G-7

The Old Courthouse, F-4  
 Riverboats (Steamship Dock), N-5  
 St. Louis Art Museum, F-7  
 St. Louis Zoo, F-7  
 Six Flags Over Mid-America, I-1  
 U.S. Grant's Farm, H-6



# & Vicinity

St. Louis Convention &  
 Visitors Commission  
 10 S. Broadway, Suite 301  
 St. Louis, MO 63102 118 325-7882

